

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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CHRISTOPHER WILLIAM PALLOTTI,
Plaintiff

Case No. 2:22-cv-01775-CDS-VCF

ORDER

v.

NYE COUNTY NEVADA, *et al.*,
Defendants

Plaintiff Christopher William Pallotti brings this civil-rights action under 42 U.S.C. § 1983 to redress constitutional violations that he claims he suffered while incarcerated at Nye County Detention Center. ECF No. 1-1. On November 11, 2022, this Court ordered Pallotti to file a fully complete application to proceed *in forma pauperis* or pay the full \$402 filing fee on or before January 20, 2023. ECF No. 3. The Court warned Pallotti that the action could be dismissed if he failed to file a fully complete application to proceed *in forma pauperis* with all three documents or pay the full \$402 filing fee for a civil action by that deadline. *Id.* at 2. That deadline expired and Pallotti did not file a fully complete application to proceed *in forma pauperis*, pay the full \$402 filing fee, or otherwise respond.

I. DISCUSSION

District courts have the inherent power to control their dockets and “[i]n the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal” of a case. *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action based on a party’s failure to obey a court order or comply with local rules. *See Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (affirming dismissal for failure to comply with local rule requiring *pro se* plaintiffs to keep court apprised of address); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to comply with court order). In determining

1 whether to dismiss an action on one of these grounds, the Court must consider: (1) the public's
2 interest in expeditious resolution of litigation; (2) the Court's need to manage its docket; (3)
3 the risk of prejudice to the defendants; (4) the public policy favoring disposition of cases on
4 their merits; and (5) the availability of less drastic alternatives. *See In re Phenylpropanolamine Prod.*
5 *Liab. Litig.*, 460 F.3d 1217, 1226 (9th Cir. 2006) (quoting *Malone v. U.S. Postal Serv.*, 833 F.2d 128, 130
6 (9th Cir. 1987)).

7 The first two factors, the public's interest in expeditiously resolving this litigation and
8 the Court's interest in managing its docket, weigh in favor of dismissal of Pallotti's claims. The
9 third factor, risk of prejudice to defendants, also weighs in favor of dismissal because a
10 presumption of injury arises from the occurrence of unreasonable delay in filing a pleading
11 ordered by the court or prosecuting an action. *See Anderson v. Air West*, 542 F.2d 522, 524 (9th
12 Cir. 1976). The fourth factor—the public policy favoring disposition of cases on their merits—is
13 greatly outweighed by the factors favoring dismissal.

14 The fifth factor requires the Court to consider whether less drastic alternatives can be
15 used to correct the party's failure that brought about the Court's need to consider dismissal. *See*
16 *Yourish v. Cal. Amplifier*, 191 F.3d 983, 992 (9th Cir. 1999) (explaining that considering less drastic
17 alternatives *before* the party has disobeyed a court order does not satisfy this factor); *accord*
18 *Pagtalunan v. Galaza*, 291 F.3d 639, 643 & n.4 (9th Cir. 2002) (explaining that “the persuasive
19 force of” earlier Ninth Circuit cases that “implicitly accepted pursuit of less drastic alternatives
20 prior to disobedience of the court's order as satisfying this element[,]” *i.e.*, like the “initial
21 granting of leave to amend coupled with the warning of dismissal for failure to comply[,]” have
22 been “eroded” by *Yourish*). Courts “need not exhaust every sanction short of dismissal before
23 finally dismissing a case, but must explore possible and meaningful alternatives.” *Henderson v.*
24 *Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986). Because this action cannot realistically proceed
25 until and unless Pallotti either files a fully complete application to proceed *in forma pauperis* or
26 pays the \$402 filing fee for a civil action, the only alternative is to enter a second order setting
27 another deadline. But the reality of repeating an ignored order is that it often only delays the
28 inevitable and squanders the Court's finite resources. The circumstances here do not indicate

1 that this case will be an exception: there is no hint that Pallotti needs additional time or
2 evidence that he did not receive the Court's order. Setting another deadline is not a meaningful
3 alternative given these circumstances. As a result, the fifth factor favors dismissal.

4 **II. CONCLUSION**

5 Having thoroughly considered these dismissal factors, the Court finds that they weigh
6 in favor of dismissal. It is therefore ordered that this action is dismissed without prejudice
7 based on Pallotti's failure to file a fully complete application to proceed *in forma pauperis* or pay
8 the full \$402 filing fee in compliance with this Court's November 21, 2022, order.

9 The Clerk of Court is directed to enter judgment accordingly and close this case. No
10 other documents may be filed in this now-closed case. If Pallotti wishes to pursue his claims, he
11 must file a complaint in a new case.

12 SO ORDERED.

13 DATED: February 7, 2023

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16 UNITED STATES DISTRICT JUDGE
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